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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/580,305	05/26/2000	Anthony A. Shah-Nazaroff	042390.P6484D2	9133

7590 07/17/2006

Gordon R Lindeen III  
Blakely Sokoloff Taylor & Zafman LLP  
7th Floor  
12400 Wilshire Boulevard  
Los Angeles, CA 90025

EXAMINER

MA, JOHNNY

ART UNIT PAPER NUMBER

2623

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)	
	09/580,305	SHAH-NAZAROFF ET AL.	
	Examiner	Art Unit	
	Johnny Ma	2623	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 28 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
Please see attached.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
**CHRIS KELLEY**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 6/28/2006 have been fully considered but they are not persuasive.

Applicant argues "that neither Carrubba nor Hjelsvold, either alone or in combination, suggests or describes receiving a selection to buy an upgraded media feature for a programming transmission. The PTO asserts that Carrubba teaches this limitation. See, Carrubba column 1, lines 52-64. However, it is respectfully asserted that Carrubba does not teach this limitation" (see Remarks pgs. 9-10). In support of this assertion, Applicant argues "[i]n Applicants' claim 1, the original program is a 'programming transmission,' Carruba's original program is not transmitted. It is housed on a CD-I disc" (see Remarks, pg. 10) and "[i]t is respectfully asserted that Carruba shows the 'complementary part' being transmitted, not the 'basic part'. The 'basic part' is stored locally. Applicants' claim 1 requires that the 'basic part' be a 'programming transmission' (see Remarks, pg. 11). The Examiner respectfully disagrees. As discussed in the previous Office Action:

*the Carrubba et al. reference discloses:*

*"[a]n embodiment for a system according to the invention is characterized in that the storage medium containing the basic part is located near the merging means and in that the other storage medium containing the complementary part is linked to the merging means via a transmission line of a communications network. The communications network is, for example, the public telephone network. The storage medium containing the complementary part is located, for example, in a data bank controlled by the provider. The complementary part stored in the databank is accessible to a plurality of users of a system according to the invention via the telephone network" (Carrubba 1:65-67; 2:1-9) wherein CPU controls the transmission of the media upgrade feature (Carrubba 4:21-32).*

*The claimed "programming transmission" is met by the combination of the complementary and basic part of the audio-visual presentation. The examiner respectfully submits that the transmission of the complementary part of the audio-visual presentation combined with the basic part of the audio-visual presentation results in programming that is, at least in part, transmitted and thus meets the claimed programming transmission.*

Thus the Carrubba et al. reference teaches a "programming transmission" comprising both a basic and complementary part. It is also noted that the Carrubba et al. reference teaches "[w]ith the video-on-demand service, video film data are supplied to CD-I players on request. The databank may be controlled by a provider who provides the basic part free of charge" (Carrubba 4:36-40), the providing of the basic part free of charge by the provider inherently includes some sort of transmission whether via a data channel or through a physical storage medium. The Carrubba et al. reference discloses both types of transmissions. The Carrubba et al. reference discloses "FIG. 11 shows a further embodiment for a system according to the invention. In this embodiment both the first storage medium, on which the basic part is stored, and the second storage medium, on which the complementary part is stored, are coupled to the merging means via the communications network. The storage media are found in different databanks 7', 7". These databanks may be controlled by the same provider who provides the basic part at a low rate and the complementary part at a higher rate" (Carrubba 7:13-21). Thus the examiner respectfully submits that the further embodiment taught by the Carrubba et al. reference clearly teaches that both the basic part and the complementary part are transmitted, program transmissions.

### ***Conclusion***


Art Unit: 2623

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johnny Ma whose telephone number is (571) 272-7351. The examiner can normally be reached on 8:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jm

  
**CHRIS KELLEY**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**